

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE LAMONT MITCHELL,

Defendant and Appellant.

F067987

(Super. Ct. No. CRM026719)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Michael L. Pinkerton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Kane, Acting P.J., Peña, J. and Smith, J.

## INTRODUCTION

Appellant Ronnie Lamont Mitchell was convicted of attempted first degree burglary (Pen. Code, §§ 664/459, count 1),<sup>1</sup> evading police in a reckless manner in a motor vehicle (Veh. Code, § 2800.2, subd. (a), count 2), hit and run driving (Veh. Code, § 20002, subd. (a), count 3), and driving with a suspended or revoked license (Veh. Code, § 14601.1, subd. (a), count 4). In addition, several enhancements were attached to the charges, which were found true. Appellant was sentenced to an aggregate term of 13 years four months in prison.

The trial court granted a pretrial motion by the prosecution to introduce evidence relating to a prior uncharged burglary pursuant to Evidence Code section 1101, subdivision (b). Appellant argues that evidence of a prior uncharged burglary was improperly admitted as evidence of identity in relation to the charged offense of attempted burglary. As a result, he contends his conviction must be reversed because he was unduly prejudiced. We disagree and affirm the judgment.

## FACTS

### *Prosecution Case*

On March 6, 2013,<sup>2</sup> Detective Luis Solis from the Merced Police Department received a communication from detectives of the Modesto Police Department. Detectives John Locke and David Ramirez of the Modesto Police Department related to Detective Solis that appellant, a suspect in a burglary in Modesto, California, was headed toward Merced, California.

Modesto detectives related the Global Positioning System (GPS) tracking data to Detective Solis and his partner, Detective Henderson, who then followed appellant to Cassis Drive in Merced. The detectives then observed appellant run from an unidentified

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> All dates occurred in 2013.

residence to a Mercury Mountaineer, get into the driver's seat, and drive off. While following the vehicle, the detectives contacted 911 dispatch and confirmed that a burglary was reported at 1322 Cassis Drive.

Courtney Williams, who resides at 1322 Cassis Drive, placed the 911 call. Ms. Williams heard persistent banging noises coming from outside of the downstairs of her residence. When she went downstairs, she noticed that the screen door of her sliding glass door, which is usually shut, was open. Ms. Williams pulled the window blinds of her downstairs window to the side and observed a man standing outside her window. She later identified the man as appellant.<sup>3</sup>

The detectives followed appellant after he left Cassis Road until Officer Gaches of the Merced Police Department initiated a traffic stop. Appellant failed to yield to Officer Gaches's emergency lights and siren and a vehicle pursuit ensued. Appellant failed to yield to two red lights, struck a parked car, and then failed to stop at a stop sign before exiting the vehicle. He fled on foot into an apartment complex at Conestoga Drive and Denver Avenue in Merced.

Appellant was detained after a brief foot pursuit. Detective Solis identified appellant as the driver of the Mercury Mountaineer. Inside the vehicle, officers discovered appellant's identification, prescription medication in appellant's name, a pair of gloves, and jewelry. One item of jewelry recovered was a ring later identified by Maria Gutierrez as one taken from her residence on March 3d when her home was burglarized.

---

<sup>3</sup> Ms. Williams was unable to positively identify appellant as the man standing outside her window during a field show-up conducted on March 6, but subsequently identified appellant at a preliminary hearing.

### ***Evidence of the Uncharged Burglary***

At trial, the People presented the following evidence in relation to an uncharged burglary committed on March 3d in Modesto. On February 14th, Modesto Police Sergeant Steve Hinkley initiated a traffic stop of a Mountaineer. The vehicle was registered to Cahauri Williams, who was traveling in the front passenger's seat. Appellant was driving the vehicle.

On February 28th, a GPS unit was placed on the Mercury Mountaineer pursuant to a court order as part of a burglary investigation. GPS data indicated that on March 3d, the vehicle traveled to several locations, all in Modesto: 2205 Prescott Road, where the vehicle remained for approximately 16 minutes, then to 2236 Palisade Avenue for approximately 65 minutes, then to 3515 Long Bridge for approximately three minutes, and then to 2900 Standiford Avenue.

On March 3d, Gutierrez received a phone call around 1:00 p.m. or 1:30 p.m. informing her that her residence on Prescott Road in Modesto was burglarized. Various items were taken from the home, including a ring and other jewelry belonging to Gutierrez. That same day, two African-American males went into the Cash for Gold Express on 2900 Standiford Avenue in Modesto. Sofia Mendoza, the store manager, identified appellant as one of the men who came into the store and offered to sell her some jewelry, including a ring.

### ***Defense Case***

Appellant testified on his own behalf. Appellant testified that on March 6th he was traveling to Merced to meet his cousin so they could travel to Sacramento to attend his younger cousin's basketball game. Appellant paid Cahauri Williams to give him a ride from Patterson, California to his cousin's apartment in Merced. While en route to his cousin's apartment, Williams indicated to appellant that he needed to make a stop to pick something up.

Cahauri Williams stopped at a Home Depot as appellant changed clothing in the backseat of Williams's Mercury Mountaineer. Williams then went to Cassis Drive, parked and exited the vehicle. Appellant remained in the backseat, changing his clothing and applying lotion.

According to appellant's version of events, shortly after Cahauri Williams returned to the vehicle and drove off, appellant heard sirens and observed police following the vehicle. A high speed chase ensued. Williams followed directions from the vehicle's navigation unit until he eventually exited the vehicle in front of an apartment complex where appellant's cousin lived. Williams then fled on foot. Appellant indicated that because he was intoxicated and scared, he also fled from police, but was subsequently apprehended.

Appellant further testified that on March 3d he visited Cash for Gold Express in Modesto for purposes of selling jewelry on behalf of Cahauri Williams. Appellant identified jewelry recovered from the Mercury Mountaineer, including a ring, as the jewelry he tried to sell. Appellant stated that he had no knowledge of where the jewelry came from.

## **DISCUSSION**

### **ADMISSION OF THE PRIOR UNCHARGED BURGLARLY EVIDENCE**

Appellant contends the trial court erred in granting the prosecution's motion in limine. Appellant specifically argues the trial court improperly admitted evidence of the prior uncharged Modesto burglary as evidence relevant to the issue of identity in relation to the charged attempted Merced burglary because the uncharged burglary and the charged offense do not share unusual and distinctive factual similarities. Appellant contends presentation of his prior uncharged offense was not only improper, but unduly prejudicial.

Pursuant to Evidence Code section 1101, subdivision (a) “evidence of a person’s character or a trait of his or her character . . . is inadmissible when offered to prove his or her conduct on a specified occasion.” However, evidence of a crime or prior act is admissible for other purposes, such as when it is offered to prove motive, opportunity, preparation, plan, knowledge, intent, identity, absence of mistake, or lack of accident. (Evid. Code, § 1101, subd. (b).)

Evidence of an uncharged crime admitted to prove intent requires the least degree of similarity between the uncharged and the charged offense; whereas, evidence admitted to prove identity requires the greatest degree. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402-403; *People v. Kipp* (1998) 18 Cal.4th 349, 369-370; *People v. Carter* (2005) 36 Cal.4th 1114, 1149.)

Evidence admissible to prove intent must only support the inference that the defendant probably possessed the same intent in each instance. (*People v. Ewoldt, supra*, 7 Cal.4th at p. 402.) However, evidence relevant to prove identity requires the greatest degree of similarity between the charged and uncharged offense such that “[t]he pattern and characteristics of the crimes must be so unusual and distinctive as to be like a signature.” [Citation.]” (*People v. Ewoldt, supra*, 7 Cal.4th at p. 403.)

Although appellant contends evidence of the uncharged burglary was offered to prove identity, respondent claims the uncharged burglary was admitted to prove intent. Appellant’s argument is primarily based upon the following comment by the trial court: “The issue isn’t whether there was a burglary of the Gutierrez residence, that’s not disputed, or I mean, that will be clearly shown by Gutierrez. The issue [is] was it Mr. Mitchell.”

However, a careful reading of the record reveals that the foregoing comment was during a discussion focused on how it could be shown that it was, in fact, appellant who committed the uncharged burglary, and not for the purpose of characterizing the ground of relevancy for the uncharged burglary. During a pretrial hearing discussing the

prosecution's motion in limine, defense counsel raised the argument that the uncharged burglary could not be admitted because the facts of the offense amounted to accusations in the absence of a conviction. The trial court explained that the fact that the uncharged burglary had occurred was not in dispute, the dispute was whether appellant could be reasonably connected to the uncharged burglary. Given the circumstantial evidence in the instant case, the trial court found that appellant could be reasonably connected to the uncharged offense: appellant previously drove the Mercury Mountaineer, GPS data tracked the vehicle to the residence burglarized on March 3d and to the Cash for Gold Express where appellant was identified.

Further, preceding the foregoing discussion, the trial court characterized evidence of the prior crime as relevant to the issue of intent, not identity. The court held that evidence of the uncharged burglary was relevant to prove intent in relation to the charged attempted burglary. The court reasoned that the uncharged burglary is probative of intent to commit theft and that appellant's possession of stolen property from the uncharged burglary evidenced this intent in relation to the charged offense.

Therefore, the record plainly indicates that evidence of the uncharged burglary was admitted for purposes of proving appellant's intent in relation to the charged attempted burglary. The trial court's discussion as to whether evidence of the uncharged burglary could be sufficiently connected to appellant was for purposes of explaining how the prior uncharged burglary could be proven.

We find that the uncharged burglary was admitted for purposes of proving intent. We now turn to the issue of whether the evidence was properly admitted. The admissibility of evidence relating to misconduct depends upon (1) whether the facts sought to be proved are material; (2) whether the uncharged crime has a tendency to prove those facts; and, (3) whether any exclusionary rule or policy applies which would require exclusion of the proffered evidence. (*People v. Steele* (2002) 27 Cal.4th 1230, 1243.)

Appellant was charged and convicted of attempted residential burglary in the first degree. Attempted burglary consists of two elements: (1) the specific intent to commit burglary and (2) “a direct but ineffectual act done toward its commission.” (§§ 21a, 459, 664.) Under section 459, intent to commit burglary requires that the People prove that the accused entered a building with the intent to commit a felony therein.

Evidence of the uncharged burglary has a tendency to prove appellant’s intent to commit the charged attempted burglary considering the similarities between the two offenses. Evidence of uncharged misconduct is admissible to prove intent where “the uncharged misconduct [is] sufficiently similar to support the inference that the defendant “probably harbor[ed] the same intent in each instance.” [Citations.]’ [Citation.]” (*People v. Ewoldt, supra*, 7 Cal.4th at p. 402.) Further, evidence offered to prove intent demands the lowest quantum of similarity, a threshold which is met based on the facts of the instant case.

The uncharged burglary was committed just three days prior to the charged offense. The Mercury Mountaineer used in the charged attempted burglary was also tracked to the residence burglarized on March 3d. As such, it can be reasonably inferred that the same vehicle was used in both offenses. Gutierrez testified that the March 3d burglary occurred by entrance through a door which was broken into sometime during the day. Courtney Williams testified that she discovered pry marks on her window and sliding glass door when appellant attempted to enter her residence on the morning of March 6th.

Moreover, evidence of the uncharged burglary, including a ring identified by Gutierrez as one which was stolen from her home, was found inside the center console of the vehicle used to commit the charged offense. The uncharged burglary and charged attempted burglary were substantially similar; both offenses involved burglaries of residential homes, the same vehicle was used in both offenses, and both offenses



occurred close in temporal proximity. Thus, evidence of the uncharged burglary has a tendency to prove the charged offense of attempted burglary.

We note that the trial court limited the use of the evidence by instructing the jury to consider evidence of the uncharged burglary for the limited purpose of intent. The jury is presumed to be reasonable and to have followed the trial court's instructions and advisements. (*People v. Thomas* (2012) 54 Cal.4th 908, 940; *People v. Harris* (1994) 9 Cal.4th 407, 426.)

The trial court did not err in admitting evidence of appellant's March 3d uncharged burglary, as the evidence presented was highly probative of appellant's intent in relation to the charged offense. Having determined that the court did not err in admitting the uncharged burglary evidence, we need not discuss appellant's argument that admission of the evidence was prejudicial.

#### **DISPOSITION**

The judgment is affirmed.